



Transparency after a compliance failure: FAQs finally answered

With the answers to some of the most frequently asked questions, companies can make successful disclosures and take decisive action

BY KATHLEEN EDMOND

This year has brought with it the full, public disclosure of several management-commissioned independent investigations. Example investigations include the Jonathan Martin/Miami Dolphins (Issue of Workplace Conduct 2/14/14) and General Motors Ignition Switch recall, May 29, 2014. Various reasons exist for this level of increased transparency. Some believe it is simply a good governance practice, while others focus on transparency as part of a board's fiduciary duty when the issue involves the CEO. In addition, communities, clients, customers, and other constituents have come to expect increased transparency from the organizations in their midst.

Still, after a breach of compliance or customer trust, companies often struggle with decisions about whether—and how much—to disclose beyond the small group of those who “need to know.” By knowing the answers to some of the questions most frequently at the heart of a disclosure analysis, companies can make successful disclosures and take decisive action—and avoid the criticism that so often follows slow and/or incomplete disclosures.

Compliance disclosure FAQs

1. What impact will a disclosure of a compliance failure have on the perceived effectiveness of an organization's compliance program and confidence in the corporate culture of integrity?

At first blush, it might seem publically acknowledging and discussing a violation of legal or policy compliance would serve as a resounding critique of the ethics and compliance program, and indeed, the company's culture of compliance. And, honestly, sometimes that may be true. But, more often, creating the opportunity to have an open and honest discussion about the reasons for the failure, actions you have taken (or plan to take) to resolve the current issue, and steps you will take to prevent it from happening again, will benefit the organization greatly.

It doesn't need to be the release of an independent investigation. It can be a town hall meeting for employees to understand what happened, see that the company holds itself accountable, (even when painful) and understand everyone's role in making sure that such a failure does not reoccur. Transparency in these matters sends a clear message that violations of law and company policy will not be tolerated. A public discussion of the incident, the investigation, the remediation taken, and that no retaliation is taken against those who raised the issue, reinforces confidence that complaints will be heard. Certainly this is not to promise that action will be required or taken on every complaint made, but it will speak loudly to the fact that “bad news” is not just ignored and that complaints will be heard.

2. Won't company-wide discussions of compliance failures invite allegations of defamation and violations of privacy?

This is a legitimate concern, and reinforces the necessity for public conversations to be focused solely on the facts. Usually, the most useful conversations focus on process breakdowns, remediation and prevention. Discussion about individual behavior is useful only as a limited learning tool. Beyond that, the conversation is not instructive, and thus not useful.

3. Won't public discussion of a compliance failure lead to increased complaints and issues raised from both employees and customers?

Almost assuredly that will happen. And, you should be glad of it. As leaders and lawyers, you would much prefer to have the information and opportunity to address and resolve problems before they leave the organization. If you have an effective compliance team, they deal with these types of issues every day and they will be of great help to your management team in investigating and resolving these issues.

4. What about our reputation and the public trust? If we talk about our flaws, won't our customers/clients lose trust in us?

In an ideal situation, a company's leaders will expect, model and enforce legally compliant behavior every day and in every situation—and that expectation will result in every member of the organization complying with all applicable laws and company policies in every situation. But in reality, there will be failures and violations—some minor, some of the “What were they thinking??!” variety. But even when those happen, how management, the legal team and the board respond will set the tone for an overall culture of ethics and compliance throughout the organization.

Conclusion

No matter the strength of company culture, individuals within that culture can make mistakes that breach compliance rules or violate customer trust. By understanding the risks and likely outcomes that follow a disclosure of those failures, companies can make informed decisions, gain control of problematic situations, and build a stronger, more effective—and more transparent—compliance and corporate culture.

About the Author

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